

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	
NEWSTREAM HOTEL PARTNERS –)	Case No. 20-41064
IAH, LLC,)	
)	
Debtor.)	(United States Bankruptcy Court for the Eastern District of Texas)
)	
UC RED LION HOUSTON HOLDER,)	
LLC,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. _____
)	
NEWSTREAM HOTEL PARTNERS –)	
IAH, LLC, TIMOTHY NYSTROM,)	
SCOTT TARWATER, and ROB)	
LAWSON,)	
)	
Defendants.)	
)	

**DEFENDANT NEWSTREAM HOTEL PARTNERS – IAH, LLC’S
NOTICE OF REMOVAL**

Defendant Newstream Hotel Partners-IAH, LLC hereby removes Cause No. 2020-15971 from the 269th Judicial District Court, Harris County, Texas to this Court pursuant to and in accordance with 28 U.S.C. § 1452(a) and Rule 9027 of the Federal Rules of Bankruptcy Procedure. As grounds for this removal, Defendant states as follows:

FACTS

1. On March 10, 2020, Plaintiff filed suit against Newstream Hotel Partners-IAH, LLC, Timothy Nystrom, Scott Tarwater and Rob Lawson, the case styled *UC Red Lion Houston Holder, LLC v. Newstream Hotel Partners-IAH, LLC, Timothy Nystrom, Scott Tarwater and Rob Lawson*, Cause No. 2020-15971, in the 269th District Court, Harris County, Texas (the “State Action”).
2. Plaintiff alleges causes of action against Defendant for breach of loan documents, including a promissory note, loan agreement, security agreement and deed of trust. Plaintiff also sued to obtain temporary and permanent injunctive relief against Defendant, as well as appointment of a receiver over Defendant’s primary asset, a hotel.
3. This suit involves causes of action involving the Defendant’s property, i.e., the debtor’s estate.
4. On April 28, 2020, Defendant filed a voluntary Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the “Bankruptcy Court”), Case No. 20-41064 (the “Bankruptcy Case”).
5. This Notice of Removal is filed within the timeframe established by the Bankruptcy Court pursuant to 28 U.S.C. § 1452 and Rules 9006(b) and 9027 of the Federal Rules of Bankruptcy Procedure.
6. This Notice of Removal is being filed pursuant to 28 U.S.C. § 1452(a), which provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

7. The State Action is properly removable under 28 U.S.C. § 1452(a) because the United States District Court for the Southern District of Texas has original jurisdiction of the State Action under 28 U.S.C. § 1334(b), which provides in relevant part:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising or related to cases under title 11.

See 28 U.S.C. § 1334(b).

8. The United States District Court for the Southern District of Texas has jurisdiction over the State Action pursuant to 28 U.S.C. § 1334(b). This action is properly removed to this Court, as the State Action is pending within this district and division, as provided for in 28 U.S.C. § 1452(a).

9. Actions removed under section 1452 of title 28 are automatically referred to the bankruptcy court for that federal district in which the underlying action was filed. *See* United States District Court for Southern District of Texas General Order 2012-6; Rule 9027-1(c) of the Local Rules of the United States Bankruptcy Court for the Southern District of Texas.

10. The State Action is related to Defendant and the Bankruptcy Case. *See Querner v. Querner (In re Querner)*, 7 F.3d 1199 (5th Cir. 1993) ("A matter is related to a case under Title 11 if the outcome could conceivably have any effect on the estate being administered in bankruptcy.").

11. Upon removal, this action is a "core proceeding" within the meaning of 28 U.S.C. § 157(b)(2)(B), (I) and (O).

12. Defendant consents, to the extent such consent is necessary, to the entry of final orders and judgments by this Court on the core matters and on non-core matters, if any.

13. This Notice of Removal is being served on counsel for all parties on this date.

14. Pursuant to Rule 9027-1(a) of the Local Rules of the United States Bankruptcy Court for the Southern District of Texas, upon information and belief, the only party that has not been served with process is Defendant Rob Lawson. The following is a list of all parties in the case and their type (e.g., plaintiff, defendant, intervenor, receiver, etc.):

<u>Party Name</u>	<u>Party Type</u>	<u>Address</u>
UC Red Lion Houston Holder, LLC Boston, MA 02116	Plaintiff	745 Boylston St.
Newstream Hotel Partners-IAH, LLC 250, Roanoke, TX 76262	Defendant	311 S. Oak Street, Suite
Timothy Nystrom Southlake, TX 76092	Defendant	1411 Stone Lakes Drive,
Scott Tarwater TX 76044	Defendant	9809 Puma Trail, Godley,

Rob Lawson

Defendant

Unknown

15. Pursuant to Rule 9027-1(a) of the Local Rules of the United States Bankruptcy Court for the Southern District of Texas, the following is a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him:

<u>Name</u>	<u>Contact Information</u>	<u>Party</u>
Eric W. Pinker	LYNN PINKER COX & HURST, LLP 2100 Ross Avenue, Suite 2700 Dallas, Texas 75201 (214) 981-3800 (t) (214) 981-3839 (f)	Plaintiff
Sara Chelette	LYNN PINKER COX & HURST, LLP 2100 Ross Avenue, Suite 2700 Dallas, Texas 75201 (214) 981-3800 (t) (214) 981-3839 (f)	Plaintiff
Patrick Disbennet	LYNN PINKER COX & HURST, LLP 2100 Ross Avenue, Suite 2700 Dallas, Texas 75201 (214) 981-3800 (t) (214) 981-3839 (f)	Plaintiff
Carlisle A. Braun	SCHEEF & STONE, LLP 2600 Network Boulevard, Suite 400 Frisco, Texas 75034 (214) 472-2100 (t) (214) 472-2150 (f)	Defendants

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16. Pursuant to Federal Rule of Bankruptcy Procedure 9027(a)(1) and Rule 9027-1(b) of the Local Rules of the United States Bankruptcy Court for the Southern District of Texas, this Notice of Removal is accompanied by the state court documents and copies of the state court documents arranged in chronological order attached hereto collectively as **Exhibit A**.

17. Pursuant to Federal Rule of Bankruptcy Procedure 9027(b) and (c), a copy of this Notice of Removal is being contemporaneously filed with the Clerk for the 269th Judicial District Court of Harris County, Texas, and notice will be promptly given to all parties to the removed claims and/or causes of action.

18. This Court may exercise its bankruptcy jurisdiction pursuant to 28 U.S.C. §§ 1334 and 1452.

WHEREFORE, Defendant Newstream Hotel Partners-IAH, LLC requests that the State Action, and all claims and causes of action therein, be removed from the District Court for Harris County, Texas to this Court, and further requests that this Court assume jurisdiction over the claims and causes of action herein removed.

Respectfully submitted,

SCHEEF & STONE, L.L.P.

By: /s/ Kelly E. Kleist

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ATTORNEYS FOR DEFENDANTS

Newstream Hotel Partners – IAH, LLC,

Scott Tarwater and Timothy Nystrom

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document, this 4th day of May, 2020, has been served upon the following counsel of record via electronic mail:

Via Electronic Filing/Service

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